

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 12-03053-01-CR-S-RED
)	
BRENT "PETE" TURLEY,)	
)	
Defendant.)	

**DEFENDANT'S REPLY TO GOVERNMENT'S RESPONSE IN OPPOSITION TO
MOTION TO SUPPRESS DEFENDANT'S STATEMENTS
AND ALL EVIDENCE DERIVED THEREBY**

Comes now Defendant, Brent "Pete" Turley, by counsel, and respectfully submits the following Reply to Government's Response in Opposition to Motion to Suppress Defendant's Statements and all Evidence Derived Thereby as Fruit of the Poisonous Tree:

1. Defendant incorporates by reference each and every fact and allegation contained in his original motion as if fully set forth herein.
2. Defendant submits that the *Miranda* waiver obtained by officers during their lengthy custodial interrogation of him on March 19, and March 20, 2012, was obtained as a result of mental and /or physical coercion, duress, threats and other improper behavior to the extent that any resulting waiver of his right to remain silent was not knowingly or voluntarily made.
3. The government is asking this court to conclude that the existence of a signed *Miranda* waiver is enough to preclude the holding of an evidentiary hearing challenging the

voluntariness of that very waiver. Such is not the law.

4. Contrary to the claims made by the government, these factual and legal assertions are more than sufficient to warrant an evidentiary hearing to discern the merits of this claim. When the matter before the court is based on a factual finding and not merely a legal finding, an evidentiary hearing is required. *See United States v. Yielding*, 657 F.3d 688, 705 (8th Cir. 2011) (finding that a hearing is unnecessary when the district court can determine that suppression is unwarranted as a matter of law).

5. In the instant case, Defendant raises a factual challenge to the admissibility of evidence, which must be litigated by a fact finder. By arguing that an evidentiary hearing is not required, the government is essentially acting in the “fact finder” role that belongs squarely before this Court.

WHEREFORE, Defendant prays that this Court set this matter for an evidentiary hearing and further Order any additional and just relief deemed appropriate under the circumstances.

Respectfully submitted,

/s/ Nancy R. Price

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CERTIFICATE OF SERVICE

I hereby certify that on Wednesday, February 13, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to all parties so entitled to such notice and that I have mailed the foregoing by U.S. mail first-class postage prepaid to the following non CM/ECF participant, Brent “Pete” Turley.

/s/ Nancy R. Price
NANCY R. PRICE